

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1017 to 1071 of 1989

with

SPECIAL CIVIL APPLICATION Nos 9044, 9045, 9087 to 9114,
9151 to 9180, 9196, 9197, 9199, 9200, 9203, 9204, 9207 to
9231, 9269 to 9322 of 1999

with

CIVIL APPLICATION Nos.13539 to 13541 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

H K DAS

Versus

BABULAL GANGARAM JOSHI

Appearance:

MR GIRISH D BHATT for Petitioners
NOTICE SERVED for Respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 30/12/1999

ORAL JUDGEMENT

In this group of petitions, common questions have arisen out of a common award and, therefore, upon request, they are being disposed of, simultaneously.

A few skeleton projection of facts leading to the rise of this group of petitions under Articles 226 and 227 of the Constitution of India, may be highlighted, at the outset.

The petitioner is a Trust of temple of Arasuri Ambaji Mata, at Ambaji, Taluka Danta, District Banaskantha, which is registered as a Public Charitable Trust under the provisions of Bombay Public Trusts Act, 1950, having registration No.A/497. The Public Trust is administered and managed by by virtue of a scheme framed by the then Government of Bombay, by its resolution dated March 17, 1960. As per the said scheme, a copy, whereof, is produced as at, Annexure A, the Collector of Banaskantha District is the Chairman of the Managing Committee having other Ex-officio and nominated members. Upon bifurcation of the of the Former State of Bombay, the Management of the Ambaji Mataji Temple continued with the Gujarat Government.

As per the mythological history and report, Ambaji Mata Temple has long history and the activities of the Trust through the Managing Committee have been expanded from time to time with one of the main objects and ideas to develop, project, pioneer and proliferate the Indian culture and its traditions. The temple attracts a large number of devotees from all over the country and also from some parts of the world. As per the record, on an average, around 5000 people daily visit the temple and that is how it is said to be one of the centres of Indian Culture.

In the circumstances, in order to facilitate and ameliorate the convenience of the visiting pilgrims and devotees, various facilities and activities are being provided including that of lodging and boarding and for that "Bhojanalay" and "Vishramgruh" are also run by the Management. Not only that even a cottage hospital is

being run by the Management. It is also reported that a Sanskrit Vidyalaya for the purpose of imparting education of Sanskrit language and various scriptures is also run by the Management. In short, it is one of the contentions of the petitioner Temple Trust that the activities undertaken by the Temple Trust are altruistic and philanthropic and out of helping and providing facilities to visiting devotees and there is no question of any element of profit making. In this context, the case of the petitioner is that the provisions of Payment of Bonus Act, 1965 would not be attracted and that the Labour Court, has lost sight of the important pleas raised on behalf of the petitioner Temple Trust. The institutions and establishments which are not run for profit could not be held to be liable for the payment of bonus to the employees.

The impugned awards of the Labour Court in each matter is not only unjust and is also illegal as the award suffer from the vice of non-application of mind to the vital facts and also the misinterpretation of the relevant provisions of law. One of the contentions is that the impugned awards recorded by the Labour Court are liable to be quashed as it is emanated out of the applications for recovery of the bonus amount and as such the Recovery Applications would not be maintainable before the Labour Court unless claim made, therein, is ascertainable or has crystallized. Learned counsel Mr Bhatt has also relied upon following decisions:

1. Workmen of Tirumala Tirupathi Devasthanam vs. Management and Another, (1980) 1 SCC 583.
2. Swaraj Ashram Karamchari Sangh v. Swarjaya Ashram, 1994 Supp (2) Supreme Court Cases 392.
3. Workmen of Central Institute of Plastics Engienering and Tools v. Management and Ors. 1990 (1) LLJ 593.

In the circumstances, the common awards recorded in Recovery Applications Nos.2125 to 2179 of 1979 by the Labour Court, Ahmedabad, on 18.11.86 and in Recovery Application Nos.38 to 182 of 1996, by the the Labour Court, Palanpur, on 22.4.99, against the present petitioner by the Labour Court holding that the provisions of Payment of Bonus Act, 1965, are applicable and as a result of which, the Labour Courts directed the petitioner Temple Trust to pay minimum bonus, at the rate of 8.33 per cent, for the year 1977-78 and 1978-1979, are

questioned by filing the aforesaid Special Civil Applications.

During the course of hearing, unfortunately, none appeared for and on behalf of the respondents-employees, though duly served, whereas, learned counsel Mr G.D.Bhatt appeared for the petitioner Temple-Trust and made vehement submissions questioning the legality and validity of the impugned awards of the Labour Court. He was, also, requested to consider whether the employees of the Temple Trust, who are working, since long, apart from the technical dispute about the applicability of the provisions of the Payment of Bonus Act, 1965, in the light of the provisions of section 32(v)(c), the Temple Trust Management and the Government could consider the grant of reasonable amount either as special bonus or adhoc bonus or lump-sum payment to each employee under whatsoever nomenclature since the petitioner Temple Trust Management with the permission of the Government has started payment of the amount of bonus since 1984 under administrative decisions, along with other Government employees and when the Management of the Temple Trust by the Government through the Managing Committee is predominantly aimed at achieving, obtaining and augmenting the Indian culture and for that purpose to provide maximum possible ameliorative treatment and facilities to the visiting devotees and pilgrims. He, therefore, conferred and consulted with the Administrative Officer Mr. A.B.Trivedi of the Managing Committee and one Mr V.H.Raval, Under Secretary of the General Administration Department of the State of Gujarat, along with other officials, who happened to be present in Court and after conferring and discussing, very rightly, indicated that the question of grant of certain amount with appropriate nomenclature, so that it may not be adversely or inadvertently misinterpreted by any other concerned person or authority in future, will be considered by the Managing Committee in the next meeting itself which is headed by the District Magistrate of the Banaskantha District and sympathetic view, obviously, is expected in the peculiar facts and special circumstances of the case. After having taken a decision in this behalf by the Managing Committee of the Temple Trust, it will be referred to the Government through the appropriate Administrative Department for approval and that process also will be expedited.

The gesture of learned counsel Mr Bhatt and the officers concerned is appreciable and this Court has no hesitation that the question of granting lump-sum amount will be considered, sympathetically, as the earnings of the

Temple Trust would not be an impediment since it has good income from the devotees. However, it was contended that the entire process is likely to take almost four months and it was also again contended that there is non-application of mind on the part of the Labour Court to the vital issues raised by the petitioner and also the plea of applicability of the provisions of Payment of Bonus Act, 1965 and also the question of authority itself of the Labour Court in Recovery Applications under section 33(C)(2) of the Industrial Disputes Act. The orders impugned before this Court in a group of 200 matters invoking the provisions of Article 226 and 227 of the Constitution of India, would not stand, and therefore, it would be necessary to quash and set aside the impugned awards and the matters are required to be remitted back to the Trial Labour Court for consideration, even if the aforesaid formula does not entail a fruitful destination.

Section 32 of the Payment of Bonus Act, 1965 prescribes a classes of employees to which the provisions of the said Act would not apply. One of the provisions relied on by the petitioners is section 32(v)(c) which provides that for the employees employed by the institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profit, the Act would not apply, which would evidently go to highlight that if the factual situation enshrined and incorporated in sub-clause (c) of clause (v) of section 32 of the Act and if it is factually found that the institutions including the hospitals, chambers of commerce and social welfare institutions which are established not for any profit earning motive, they would be excluded from the operation of the liability for the payment of bonus to the employees by the employer. Whether, for that purpose any institution is or has been established for the purpose of earning profit or not, obviously, would be a question of fact which requires probe and investigation. The question as to whether such a probe is open or permissible in a Recovery Application under section 33(C)(2) of the Industrial Disputes Act, 1947 and again whether the applicability of the provisions of the Bonus Act and as to whether such an application under section 33(C)(2) of the ID Act directly would be competent are some of the important mixed questions of law and fact and therefore the impugned awards recorded by the Labour Court in two sets of Recovery Applications filed by the employees of the petitioner Temple Trust claiming the right of payment of bonus under the Payment of Bonus Act, 1965 will have to be examined, evaluated and analysed thoroughly in the

backdrop and matrix of facts. With due respect, in the present group of petitions, the Labour Court has remained, unfortunately, oblivious to certain important facets and has also not probed from the light emerging from the facts and failed to consider the material facts which could have otherwise thrown light on the issue. Of course, once the matter is proposed and sought to be remanded, the entire award under challenge in petitions under Article 226 and 227 of the Constitution are required to be quashed and set aside as in the opinion of this Court, there is fit and appropriate case for quashing and setting aside the impugned awards and to remand the entire group to the Labour Courts for fresh look into it and for resultant adjudication in accordance with law. However, since learned counsel Mr Bhatt upon instructions and consultations with the officers present in the Court today, has also stated that within a spell of four months the question of payment of reasonable amount by whatever nomenclature will be examined, the same is required to be appreciated.

In the result, the impugned awards in this group of petitions recorded by the Labour Courts are quashed and set-aside. The entire group of matters is remitted back to the Labour Court for reconsideration and reexamination of the points and issues involved in the light of the facts and circumstances and in accordance with law, expeditiously, after 1st May, 2000, if need be, as in the meantime, as per the earlier observations and the statement made at the Bar by learned counsel Mr Bhatt upon instructions and consultations with the officers, the matters if fails to be resolved within that time frame, it will be open for the party or parties to notify the same to the concerned Labour Court so that the dispute could be resolved further in the light of the directions contained hereinabove and in the alternative if successful settlement fails, the statutory conciliation and adjudication shall follow. Undoubtedly, this Court is very much hopeful, considering the manner and mode in which the statement is made at the Bar upon consultations and instructions, that the parties, in all probabilities, may not have to enter into a litigative legal conduit pipe again as they are going to sort out and settle the issue of payment claimed by the workers/employees by way of bonus for the period in question under whatever nomenclature it may be given under the settlement and it will be to the persons who are rendering their services to the Trust and through the Trust to the devotees will in all probabilities be given appropriate amount cutting short a second innings or the further legal process which may be necessary if

settlement does not fructify.

With these observations and appreciating the positive and constructive approach of the officers present and manifested to the Court through learned counsel Mr Bhatt, all these petitions are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

In view of the above order, obviously, there would not arise any question of passing any order in Civil Applications since the same would not assume any survival value.

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(vjn)